

EXHIBIT A

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

MAGTEN ASSET MANAGEMENT CORP.)
and LAW DEBENTURE TRUST COMPANY)
OF NEW YORK,)
)
Plaintiffs,)
) Civil Action
v.) No. 04-1494-JJF
)
NORTHWESTERN CORPORATION,)
)
Defendant.)
-----)
MAGTEN ASSET MANAGEMENT CORP.,)
)
Plaintiff,)
) Civil Action
v.) No. 05-499-JJF
)
MIKE J. HANSON and ERNIE J. KINDT,)
)
Defendants.)

Potter, Anderson & Corroon LLP
1313 North Market Street
Wilmington, Delaware

Tuesday, July 10, 2007
2:00 p.m.

BEFORE: JOHN E. JAMES, ESQ.
SPECIAL DISCOVERY MASTER

TRANSCRIPT OF PROCEEDINGS

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ORIGINAL

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1 SPECIAL DISCOVERY MASTER JAMES: This is
2 Special Master James and this is a telephone
3 conference that's taking place at 2:00 p.m. on
4 July the 10th in response to an application from the
5 defendants in the case with respect to some written
6 discovery requests, specifically Magten Asset
7 Management Corporation's objection to NorthWestern
8 Corporation's third request for production of
9 documents, and also the opposition to the subpoena
10 served by Messrs. Hanson and Kindt on I guess
11 Mr. Embry.

12 And we'll start, as I indicated, with
13 NorthWestern Corporation and Mr. Hanson and Kindt to
14 the extent they have some additional argument. There
15 are basically three questions that this matter raises
16 and I would like each side to address them. The first
17 question is in the motion papers that -- where in the
18 motion papers that were the subject of the May 18
19 hearing, was there an application on behalf of the
20 defendants to take the additional written discovery
21 that's at issue here, either the subpoena or the third
22 request for production of documents beyond the time
23 for the cutoff with respect to written discovery?

24 Secondly, to the extent there is something



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1 in the record where that application was made, where
2 in either the transcript from May 18th or in the
3 reports and recommendations is there support for the
4 proposition that I ruled that further written
5 discovery could go forward after the May 2, I believe,
6 cutoff and extend to the end of June?

7 And then, lastly, to the extent there is
8 support that I granted an extension on the written
9 discovery period as well as the oral discovery period,
10 I want each side to address the merits of the
11 particular request for production of documents and the
12 objections made by Magten and Law Debenture.
13 Specifically from the perspective of Magten and Law
14 Debenture Trust Company of New York, what is the basis
15 for your objections and from the perspective of the
16 defendants, why are those objections not well-founded?

17 So, Ms. Delaney, you can go ahead with
18 those three questions.

19 MS. DELANEY: Thank you, Mr. James.

20 First, there was nothing in our motion
21 papers that requested any additional time for written
22 discovery. However, there was an outstanding
23 discovery item that had been served upon plaintiffs at
24 the time that we met on May 18th, and on page 91 to 93



1 of the record there is a reference to that. It's
2 colloquy between Mr. Pizzurro and Ms. Steingart where
3 Mr. Pizzurro notes that we served interrogatories and
4 document requests which were due on May 11th and
5 Ms. Steingart responded "We will respond."

6 Now, that May 11th response to
7 interrogatories was beyond the May 1 date, but the
8 parties agreed that that response would be submitted.
9 We didn't get that response, however, immediately
10 after May 18th. We didn't actually receive a response
11 until June 1, I believe. So that is the only record
12 evidence that we have on this issue of additional
13 written discovery. There was nothing in your report
14 and recommendation.

15 With respect to the merits, when we did
16 receive the response to our interrogatories on June 1
17 we noted that the plaintiffs specifically used and
18 used many times the phrase that these things were
19 being produced pursuant to investment authority that
20 they had. So the third request that we sent
21 immediately, within one week of receiving those
22 responses on June 1, all went really to one question
23 and that was what documents did they have that showed
24 the investment authority on behalf of Magten for these



1 unrelated entities?

2 And as you have in front of you,
3 plaintiffs objected on the basis that these responses
4 were untimely; that the cutoff date was May 1. And we
5 do admit that this is beyond what was contemplated
6 originally, but it was our understanding that
7 plaintiffs' implicit agreement, actually their verbal
8 agreement that they would produce pursuant to the
9 outstanding interrogatories, which they did respond to
10 on June 1, was their understanding as well that
11 document discovery had been extended.

12 SPECIAL DISCOVERY MASTER JAMES: Okay.
13 With respect to the merits of the discovery, of course
14 Magten has objected to the discovery. Why are
15 there -- and apart from the untimeliness objection,
16 they have objections to the merits.

17 Are there any other aspects of their
18 objections that you want to address?

19 MS. DELANEY: I think I've addressed the
20 deadline issue. And most of their objection, in fact,
21 if not all, went to the timeliness.

22 However, as we have put in our letter
23 dated July 9th, we don't believe that there is any
24 burden on plaintiffs. These are a discrete set of 13



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1 requests that go to a specific item of investment
2 authority with respect to identifying accounts. So we
3 aren't asking the plaintiffs to go through what we
4 understand to be a difficult exercise to come up with
5 the documents that would evidence their authority and
6 also provide evidence of their standing to bring this
7 lawsuit on behalf of what appear in their document
8 requests and interrogatory responses to be unrelated
9 accounts.

10 SPECIAL DISCOVERY MASTER JAMES: Why can't
11 you get the same information through the deposition of
12 Mr. Embry, who I guess is a 30(b)(6) witness?

13 MS. DELANEY: Well, I believe we attempted
14 to get that information, at least counsel for
15 Mr. Hanson and Mr. Kindt attempted by including the
16 document request in their subpoena. And although they
17 might be able to address that more thoroughly, that
18 request was also denied, which leads us to believe
19 that we're not going to get an answer and it may be
20 that Mr. Embry won't remember the details of what
21 might be written in a contract between Magten Asset
22 Management and these particular clients as he sits at
23 a deposition later this week. It may be something
24 that really is only evidenced by a writing or best



1 evidenced at least by a writing.

2 SPECIAL DISCOVERY MASTER JAMES: This case
3 has been pending for some time and I'm a little
4 surprised that this issue hadn't come up before.

5 Do you have an explanation as to why these
6 requests were made at the eleventh hour or perhaps in
7 Magten's view at 2:00 a.m. in the morning?

8 MS. DELANEY: Correct, Your Honor. These
9 are late responses. But, again, it wasn't until June
10 1 that we got a response that specifically and
11 repeatedly mentioned that Magten had investment
12 authority over these accounts. This is in response to
13 reviewing the documents that they had produced earlier
14 in May.

15 And that's what triggered this inquiry.

16 MR. KALECZYC: This is Stan Kaleczyc in
17 Helena.

18 In addition to the points that Nancy
19 Delaney has just raised, first we have been attempting
20 to take Mr. Embry's deposition for quite some time and
21 well in advance of the May 1 original discovery
22 cutoff. For a variety of reasons, we were always told
23 that Mr. Embry was not available and, therefore, we
24 were not able to take his deposition during that time



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1 frame. Had we taken his deposition or been able to
2 schedule definitively his deposition during that time,
3 this issue may have come to a head at that point.
4 That's number one.

5 Number two, then when we had the hearing
6 in front of you and there was the order to extend
7 discovery to June 30th, counsel for Magten was
8 gracious enough to agree and consent to having
9 Mr. Embry's deposition taken after the June 30th
10 cutoff because of the impossibility of scheduling his
11 deposition before that time given the other
12 depositions, as well as the schedule of counsel,
13 including myself and Ms. Beatty. So it was not until
14 June, as Nancy Delaney pointed out, that for the first
15 time this investment authority issue was raised. And
16 it is a matter that we do want to probe in Mr. Embry's
17 deposition that will be taken Thursday morning and,
18 therefore, we thought it was appropriate that for
19 purposes of that deposition he provide us the
20 documents.

21 Now, when we noticed Mr. Embry's
22 deposition we did not notice him as a 30(b)(6) witness
23 per se, but we did not believe that that was necessary
24 because the record, I believe, is clear and there are



1 certainly documents on file with the Secretary of
2 State's office in Delaware indicating that Mr. Embry
3 is the chairman and/or chief executive officer of
4 Magten Asset Management Corporation and we understand
5 from reading the deposition transcript that Mr. Embry
6 gave in another related matter that he is the only
7 officer of Magten and, therefore, he uniquely would
8 have possession of that information and, therefore,
9 there would be no need to designate a different
10 30(b)(6) witness since he is effectively Magten for
11 these purposes and has the information that we're
12 seeking.

13 The suggestion of untimeliness I don't
14 think is totally appropriate given that we have been
15 attempting to address this issue with Mr. Embry well
16 before the May 1 original discovery cutoff.

17 SPECIAL DISCOVERY MASTER JAMES: The
18 documents that you're seeking, is it your
19 understanding, Mr. Kaleczyc, that they're only in the
20 possession of Mr. Embry qua Mr. Embry as an individual
21 as opposed to being within the possession of a party
22 to the suit, i.e. Magten?

23 MR. KALECZYC: Quite honestly, Special
24 Master James, we don't know if they are in the



1 possession of Mr. Embry as Mr. Embry or Mr. Embry as
2 the chairman and CEO of Magten Asset Management
3 Corporation.

4 SPECIAL DISCOVERY MASTER JAMES: Okay. So
5 as I understand the lay of the land here, your clients
6 at least have noticed a regular 30(b)(1) deposition of
7 Mr. Embry pursuant to a Rule 45 subpoena.

8 Is NorthWestern also seeking, has it filed
9 a notice of deposition for a regular 30(b)(1)
10 deposition or is their deposition a 30(b)(6) that's
11 going to take place on the 12th?

12 MS. DELANEY: We are attending the
13 deposition as noticed and we'll be available to ask
14 questions, but we have not served a separate notice of
15 deposition or subpoena.

16 SPECIAL DISCOVERY MASTER JAMES: So the
17 only notice of deposition that's outstanding is the
18 one that was filed by Mr. Kaleczyc's clients?

19 MS. DELANEY: That's correct.

20 SPECIAL DISCOVERY MASTER JAMES: Okay. Is
21 there a plan to take the deposition of the
22 corporation?

23 MR. KALECZYC: Well, Mr. James, if you
24 rule today that we cannot take the deposition of the



1 corporation or consider the deposition of Mr. Embry on
2 Thursday to cover those matters, then I suppose we
3 would seek separate leave from you to then take a
4 30(b)(6) deposition of Magten. And I am assuming that
5 Mr. Embry would be their 30(b)(6) witness since he is
6 the only officer, only employee of Magten based upon
7 the information that we have, unless Ms. Steingart can
8 represent to the contrary.

9 SPECIAL DISCOVERY MASTER JAMES: Thank
10 you.

11 Ms. Steingart, let's hear from you.

12 MS. STEINGART: Okay. I guess we'll start
13 with --

14 SPECIAL DISCOVERY MASTER JAMES: Why don't
15 you start with my three questions?

16 MS. STEINGART: Right. Certainly there
17 was nothing in the motion papers filed with respect to
18 the request to extend discovery that dealt with the
19 extension of document requests or document discovery
20 and, indeed, the defendants as we pointed out in our
21 letter to you of this morning, sir, both NorthWestern
22 and Hanson and Kindt opposed extension of any kind of
23 discovery. And I think that the record is clear that
24 the discovery that we were discussing on the record,



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1 both Mr. Pizzurro and myself, was the late-served
2 discovery that was already extant that NorthWestern
3 had provided and we indicated that in light of the
4 fact that the Special Master was going to extend the
5 discovery cutoff for the taking of depositions that we
6 would respond to that discovery which was extant and
7 late filed by NorthWestern.

8 There was no request during that hearing
9 for NorthWestern to file additional discovery
10 requests. Indeed, as Ms. Delaney admits on the phone
11 here, that was not even contemplated by them.

12 Also, I've located paragraph 30 of your
13 order, sir, and paragraph 30 of your order which
14 embodies the record ruling from May 18th indicates,
15 I'll quote, "Accordingly, as reflected in the bench
16 ruling that appears at page 191, line 21 through page
17 199, line 7 each side would be permitted to take 15
18 depositions and the revised back deposition cutoff
19 date would be moved from May 2nd to June 30, 2007,"
20 close quote.

21 So I think it's fairly clear that the
22 ruling was to extend deposition discovery at our
23 request, but we agreed during the hearing to respond
24 to the outstanding document requests that had been



1 posed by NorthWestern. I think that takes care of the
2 first two questions, sir, that you asked.

3 The third question, the merits of the
4 request -- and I would like to bifurcate this, if I
5 may. The first letter that was written to you, sir,
6 was written by NorthWestern and NorthWestern was
7 addressing their document requests, which were of
8 course filed out of time and relate to documents and
9 to issues that not only go to the beginning of this
10 case but go to claims that NorthWestern filed in the
11 bankruptcy and for which NorthWestern has also taken,
12 has already taken discovery.

13 So I just really don't even understand the
14 genesis of these questions. There are certainly posed
15 late. They're certainly not relevant to the issues in
16 this proceeding and they're certainly free to ask
17 Mr. Embry about them.

18 So I think that the requests are not
19 well-taken not only because they're out of time but
20 because they don't have relevance to the issues that
21 are being presented here.

22 SPECIAL DISCOVERY MASTER JAMES: Let me
23 stop you there. Let me stop you there, if I may
24 please.



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1 You say they aren't relevant, but you do
2 say that they can ask Mr. Embry about the subject
3 matters in those requests. So as I understand it,
4 when the deposition goes forward on the 12th you will
5 not be seeking -- and I'm not sure I know how you
6 could -- to interpose an objection to their making
7 inquiries into the subject areas that are within the
8 document requests or the subpoena requests.

9 Am I correct on that?

10 -- MS. STEINGART: You are correct. And I
11 think that if I did so, I would be violating Delaware
12 practice in this regard.

13 You know, as long as the questions are not
14 scandalous or humiliating or in some way harassing, I
15 think that the witness is required, unless the
16 material is privileged, to be permitted to answer the
17 question. So that's my, you know, that's my
18 understanding. So certainly they could ask these
19 questions.

20 I am confused about the back and forth
21 concerning what notice Mr. Embry is appearing on
22 Thursday pursuant to, and you'll excuse my poor
23 grammar. NorthWestern was the only defendant that
24 timely filed a notice of deposition and that notice of



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1 deposition was a 30(b)(6) deposition on Magten and
2 that is the deposition for which Mr. Embry is
3 appearing.

4 The subpoena that was served in June by
5 Hanson and Kindt is not timely. It's not timely as an
6 issue of fact discovery and it's not timely as an
7 issue of deposition notice. So Mr. Embry is appearing
8 as the representative of Magten as far as I understand
9 it in response to the only notice of deposition that
10 was timely served in this case, which was the one that
11 was served by NorthWestern when discovery was being
12 served back and forth. And as Stan explains, the
13 timing for Mr. Embry's deposition is the result of the
14 schedules of both the witness and counsel for
15 NorthWestern. We were perfectly willing and able to
16 make him available during June and happy to do so.

17 But to the extent that it accommodated
18 others, we were also more than happy to make that
19 accommodation. But if it happened at that time -- as
20 you can imagine, we scheduled it at a time before the
21 subpoena from Hanson and Kindt ever came. So it
22 couldn't possibly be pursuant to that subpoena that
23 we're doing this deposition.

24 SPECIAL DISCOVERY MASTER JAMES: Are you



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1 telling me that no new notices of deposition were
2 filed after May the 2nd? I ordered that the
3 deposition discovery period, the fact deposition
4 discovery period would be extended to June 30, 2007.

5 Of course, as of May the 18th as I
6 understand it a number of notices of deposition had
7 been filed. I can't recall whether a notice had been
8 filed for Mr. Embry. I believe it had been, and it
9 was probably NorthWestern's 30(b)(6).

10 MS. STEINGART: Right.

11 SPECIAL DISCOVERY MASTER JAMES: Have any
12 other deposition notices been filed by either side
13 since May the 18th other than the one that is
14 referenced here today that was filed by Mr. Hanson and
15 Mr. Kindt on Mr. Embry?

16 MS. STEINGART: Right. That was the only
17 deposition notice or subpoena that was filed after the
18 hearing before you and it was at the hearing, at the
19 conclusion of it that we had discussion with counsel
20 to schedule Mr. Embry's deposition. And so that
21 discussion was had and the timing of it was discussed
22 before that subpoena was ever served because we were
23 arranging the discovery pursuant to NorthWestern's
24 subpoena.



1 SPECIAL DISCOVERY MASTER JAMES: You mean
2 NorthWestern's notice of deposition?

3 MS. STEINGART: Exactly. I'm sorry.
4 Thank you, sir. NorthWestern's notice of deposition.

5 SPECIAL DISCOVERY MASTER JAMES: Okay.
6 Anything else?

7 MS. STEINGART: That's all.

8 SPECIAL DISCOVERY MASTER JAMES: Anything
9 from Mr. Kaleczyc or Ms. Delaney?

10 MR. KALECZYC: This is Stan Kaleczyc.

11 My recollection is a little bit different
12 than Ms. Steingart's. And that is, that we had
13 originally filed a notice of deposition of Mr. Embry
14 in April and that deposition did not go forward
15 because of various scheduling and related issues that
16 came up at that time.

17 Then my recollection is that after May 18
18 we did file an amended notice of that deposition
19 rescheduling it for July 12th after the date was
20 confirmed with Ms. Steingart that Mr. Embry would be
21 available on July 12th. And then also the subpoena
22 was issued after we had an opportunity to review the
23 responses to the requests -- excuse me -- responses to
24 the discovery served by NorthWestern where this vague



1 term of investment authority was first raised in the
2 answers to that discovery and that precipitated not
3 only NorthWestern's third set of discovery requests
4 but also the subpoena that we filed.

5 And, again, as Ms. Delaney had originally
6 pointed out, we think that this is very relevant to
7 the question of the standing of Magten to sue
8 Mr. Hanson and Mr. Kindt.

9 SPECIAL DISCOVERY MASTER JAMES:
10 Ms. Delaney?

11 MS. DELANEY: I would just briefly join in
12 the relevance, Your Honor. I believe that these
13 documents would be critical to the issue.

14 As to whether or not Magten has standing,
15 they have asserted since the inception of this
16 litigation that they are the holder of 33, somewhere
17 between 33 or more percent of the QUIPS that are at
18 issue here and I think it is extremely relevant that
19 we be permitted to determine pursuant to what
20 investment authority that they claim that they have.
21 You know, can we see those documents that create that
22 authority?

23 SPECIAL DISCOVERY MASTER JAMES:
24 Ms. Steingart, do you have something?



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1 MS. STEINGART: Yes, if I might. Thank
2 you, sir.

3 NorthWestern, certainly NorthWestern and
4 Hanson and Kindt, but certainly NorthWestern has had a
5 list of the accounts in which the QUIPS are held and
6 in which the QUIPS were purchased for years. This
7 isn't the first they have heard that Magten as an
8 investment advisor or as an investment fund has
9 invested on behalf of a number of entities and it is
10 through those investments that Magten holds the QUIPS
11 and it's because of the investment authority in these
12 agreements that Magten is seeking the relief here.

13 This has been, this has been on the table
14 since Magten first filed its proof of claims in the
15 bankruptcy, through two depositions that have already
16 occurred in this matter in ancillary proceedings.

17 So for NorthWestern to say that there has
18 been some response to an interrogatory or a document
19 request where lo and behold Magten has purchased the
20 QUIPS because it had investment authority, you know,
21 that just is a little hard to take at this point.

22 This has always been on the table. This has always
23 been the case. This is really a non-issue because
24 there's no, you know, there can be no dispute about



1 the investment authority that Mr. Embry has or that
2 actually it is to Magten, but certainly they can ask
3 about it at the deposition.

4 As I understand, this is a deposition of
5 Magten, a 30(b)(6). If what both NorthWestern and
6 Hanson and Kindt are saying now no, it is not a
7 30(b)(6), this is just Mr. Embry individually, you
8 know, they can take their choice, but my view is that
9 as far as I understand it the notice to which we are
10 producing Mr. Embry is a 30(b)(6) of Magten.

11 SPECIAL DISCOVERY MASTER JAMES:

12 Mr. Kaleczyc, I have a question for you.

13 The subpoena that you filed, if you filed
14 it, back in April to which you were alluding a minute
15 ago, did that particular -- well, first of all, did
16 you actually file the subpoena?

17 MR. KALECZYC: Well, certainly in April of
18 this year it was a notice of deposition. There was no
19 subpoena with it at that time. The only subpoena is
20 the subpoena that is dated I believe June 18th.

21 SPECIAL DISCOVERY MASTER JAMES: Okay.

22 Thank you.

23 MR. KALECZYC: But at this point,
24 Mr. James, I think given the representations of



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1 Ms. Steingart and the discussion that we have had,
2 this has become almost a moot technical issue in terms
3 of 30(b)(1) versus 30(b)(6). It's clear that
4 Mr. Embry is appearing pursuant to a 30(b)(6)
5 deposition and I think we will all be proceeding on
6 that basis.

7 MS. DELANEY: And that's acceptable to
8 NorthWestern as well.

9 SPECIAL DISCOVERY MASTER JAMES: All
10 right. That takes one issue off my platter then.

11 I'm prepared to issue a ruling on this. I
12 think everyone has conceded or recognized that there
13 was no application by the defendants for additional
14 time, for an extension of time to take additional
15 factual discovery through June the 30th. So there's
16 no question that the third request for production of
17 documents directed to Magten is untimely.

18 I certainly have it within my discretion
19 to allow this discovery if there is good cause shown.
20 I don't think there is good cause here. This is one
21 of those classic cases of no good deed goes
22 unpunished. In this instance, Magten voluntarily
23 agreed to answer the interrogatories propounded by the
24 defendants which arguably were not timely. They went



1 ahead in good faith and did that in part in
2 consideration for the extension of the fact deposition
3 discovery period in which they had a much greater
4 interest than the defendants.

5 And apparently it was the answers to
6 interrogatories that they gave in May that triggered
7 this subsequent interest in these particular
8 documents. I have to be -- I'm a little skeptical of
9 the fact that the information that is now being sought
10 was not previously available at some point in this
11 litigation based on what I am hearing from at least
12 Ms. Steingart and I haven't heard anything to the
13 contrary from the defendants. Certainly there was
14 enough information about this aspect of the QUIPS that
15 was available to the defendants to timely propound
16 discovery requests that have now been filed late and
17 are incorporated in the third request for production
18 of documents or the subpoena duces tecum that Messrs.
19 Hanson and Kindt have filed.

20 Having looked at the document requests, I
21 do see the relevance, but at this point that's not an
22 issue for me to decide. The question is whether the
23 discovery that's sought through the depositions is
24 reasonably calculated to lead to the production of



1 admissible evidence. Ms. Steingart has indicated that
2 she doesn't intend to prevent any questioning of
3 Mr. Embry in his Rule 30(b)(6) capacity about the
4 subject matter that is contained within the subpoena
5 duces tecum and within the third request for
6 production of documents, so to that extent the
7 defendants are not prejudiced in obtaining whatever
8 information they can from Mr. Embry about the subject.
9 And since he seems to be the principal actor for
10 Magten, he probably has extensive knowledge about this
11 issue, notwithstanding that he may not be presented
12 with any paper by the defendants to refresh his
13 recollection.

14 As to the notice of deposition filed by
15 Messrs. Hanson and Kindt, that is now moot because
16 Mr. Kaleczyc has indicated that they're willing to
17 proceed with a 30(b)(6) deposition, so I don't have to
18 address that issue.

19 So I believe that I've dealt with all of
20 the issues that were raised by this emergency
21 application, unless someone else has something to
22 raise.

23 Hearing nothing, then this hearing is
24 adjourned.



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Thank you very much.

(Proceedings concluded at 2:33 p.m.)



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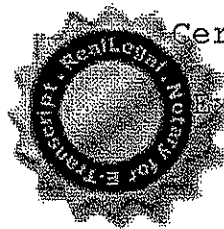
1 State of Delaware.)
2 New Castle County)
3
4

5 CERTIFICATE OF REPORTER
6

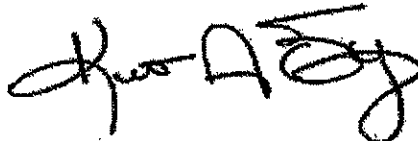
7 I, Kurt A. Fetzer, Registered Diplomate
8 Reporter and Notary Public, do hereby certify that the
9 foregoing record, pages 1 to 26 inclusive, is a true
10 and accurate transcript of my stenographic notes taken
11 on July 10, 2007, in the above-captioned matter.
12

13 IN WITNESS WHEREOF, I have hereunto set my hand
14 and seal this 11th day of July, 2007, at Wilmington.
15
16
17

18 Kurt A. Fetzer, RDR, CRR



Certification No. 100-RPR
Expires January 31, 2008)



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